UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CORDUA RESTAURANTS, INC.	
and	**Cases 16-CA-160901**
STEVEN RAMIREZ	
and	**16-CA-161380**
ROGELIO MORALES	
and	**16-CA-170940** **16-CA-173451**
SHEARONE LEWIS	

ORDER VACATING DECISION AND ORDER

On April 26, 2018, the National Labor Relations Board issued a Decision and Order in this proceeding, reported at 366 NLRB No. 72, in which it found that certain unfair labor practices had been committed, and severed and held in abeyance other unfair labor practice allegations. Thereafter, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit, but the administrative record has not yet been filed with the court.

On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S. Ct. 1612 (2018). In view of the Court's decision, the Board has sua sponte decided to vacate its Decision and Order pursuant to Section 10(d) of the National Labor Relations Act, to reconsolidate those allegations with the severed allegations, and to reconsider the entire proceeding.[1]

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[1] Section 10(d) states that "[u]ntil the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." See also *In re NLRB*, 304 U.S. 486 (1938).

Dated, Washington, D.C., August 15, 2018

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Members Pearce and McFerran, dissenting.

We disagree with our colleagues that *Epic Systems* warrants reopening the issues previously decided in this case. *Epic Systems* resolved the question whether an employer's maintenance of an arbitration agreement barring employees from bringing a collective action violated the Act. By contrast, in the present case the Board found that the Respondent violated the Act by discharging employee Steven Ramirez in response to his filing of a collective wage-and-hour lawsuit against the Respondent. It is well-settled that the filing of such a lawsuit constitutes protected concerted activity, and the Respondent has not contended otherwise. Thus, the Board's finding of the unlawful discharge of Ramirez is not affected by the holding of *Epic Systems*.

Dated, Washington, D.C., August 15, 2018

MARK GASTON PEARCE, MEMBER

LAUREN MCFERRAN, MEMBER